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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,
v.
Andrew Gustavo Barraza,
Defendant.

No. CR-17-01201-001-PHX-GMS

ORDER

Pending before the Court is Defendant Andrew Gustavo Barraza's Amended Motion for Compassionate Release. (Doc. 53.) For the following reasons, the Motion is denied.

BACKGROUND

On July 16, 2018, Defendant pled guilty to one count of distribution of child pornography. (Doc. 41.) Defendant received a ninety-seven-month sentence on July 18, 2018. (Doc. 42.) Defendant is currently incarcerated at Federal Correctional Institution Lompoc with a projected release date of July 6, 2024. On November 20, 2020, Defendant filed this motion seeking compassionate release due to his increased risk of COVID-19 complications from his underlying health conditions and the conditions in his prison facility.

DISCUSSION

I. Legal Standard

Compassionate release is governed by 18 U.S.C. § 3582(c), as amended by the First

1 Step Act of 2018. Pub. L. No. 115-391, 132 Stat. 5194, at 5239-40 (2018); *see United*
 2 *States v. Tsosie*, No. CR940003101PCTDGC, 2020 WL 3268694, at *1 (D. Ariz. June 17,
 3 2020) (“The First Step Act amended § 3582(c) to permit motions for compassionate release
 4 by prisoners,” rather than only the Prison Director). Amended § 3582(c) provides:

5 (A) the court, upon motion of the Director of the Bureau of Prisons [BOP],
 6 or upon motion of the defendant after the defendant has fully exhausted all
 7 administrative rights to appeal a failure of the [BOP] to bring a motion on
 8 the defendant's behalf or the lapse of 30 days from the receipt of such a
 9 request by the warden of the defendant's facility, whichever is earlier, may
 10 reduce the term of imprisonment . . . after considering the factors set forth in
 11 section 3553(a) to the extent that they are applicable, if it finds that –

12 (i) extraordinary and compelling reasons warrant such a reduction . . . and
 13 that such a reduction is consistent with applicable policy statements issued
 14 by the Sentencing Commission.

15 18 U.S.C. § 3582(c). Although § 3582(c) does not define “extraordinary and compelling
 16 reasons,” the Sentencing Commission has identified four categories that may qualify:
 17 serious medical conditions, advanced age, family circumstances, and a catch-all “other
 18 reasons.” U.S.S.G. § 1B1.13, application note 1(A)-(D); *see United States v. Esparza*, No.
 19 17-cr-1101-JAH, 2020 WL 2838732, at *2 (S.D. Cal. June 1, 2020).¹

20 II. Analysis

21 As it is dispositive of Defendant’s Motion, the Court addresses only whether
 22 Defendant poses a danger to the community. In addition to showing extraordinary and
 23 compelling reasons for release, Defendant must show he “is not a danger to the safety of
 24 any other person or the community, as provided under [18 U.S.C. § 3142(g)].” 18 U.S.C.
 25 § 3582(c)(1)(A)(ii). In making this determination, courts should consider “(1) the nature
 26 and circumstances of the offense charged . . .; (2) the weight of the evidence against the
 27 person; (3) the history and characteristics of the person . . .; and (4) the nature and
 28 seriousness of the danger to any person or the community that would be posed by the

29 ¹ Though, by its terms, the current policy statement applies to motions for compassionate
 30 release filed by the BOP Director, it does provide helpful guidance given the commission
 31 has not amended the statement since the FSA was enacted or adopted a new policy
 32 statement applicable to motions filed by defendants. U.S.S.G. § 1B1.13; *see United States*
v. Beck, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019) (citing *United States v. Gross*, No.
 33 2:04-CR-32-RMP, 2019 WL 2437463, at *2 (E.D. Wash. June 11, 2019)).

1 person's release." 18 U.S.C. § 3142(g).

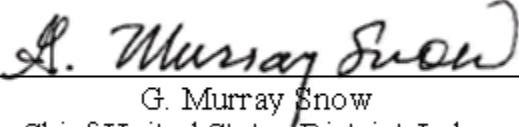
2 Regardless of whether Defendant's pre-existing conditions, combined with the
 3 COVID-19 pandemic, are extraordinary and compelling reasons for release, Defendant has
 4 failed to demonstrate he would not pose a danger to any person or the community if
 5 released. *See United States v. Dade*, 959 F.3d 1136, 1139 (9th Cir. 2020) ("[W]hether or
 6 not [a defendant] faces a risk from COVID-19 in prison has no bearing on whether he will
 7 be a danger to the community if released."). Defendant was charged with distribution of
 8 child pornography, a serious offense. After the government conducted its first search of
 9 Defendant's home and spoke to Defendant about him seeking out child pornography,
 10 Defendant obtained another computer and again downloaded software to view child
 11 pornography. (Doc. 58 at 3–4.) In light of the seriousness of Defendant's offense,
 12 Defendant's decision to continue to access child pornography after a search was conducted
 13 on his home, and the fact that Defendant is only halfway through his sentence, the Court
 14 finds that Defendant remains a threat to public safety. *See, e.g., United States v. Martin*,
 15 No. CR-08-00433-001-TUC-DCB (GEE), 2020 WL 6048328, at *2 (D. Ariz. Oct. 13,
 16 2020) (denying compassionate release for an inmate suffering from several underlying
 17 conditions due to his conviction for child pornography). Accordingly, Defendant's Motion
 18 is denied.

19 CONCLUSION

20 For the reasons set forth above, Defendant's Motion is denied because he poses a
 21 danger to the community.

22 **IT IS THEREFORE ORDERED** that Defendant's Amended Motion for
 23 Compassionate Release (Doc. 53) is **DENIED**.

24 Dated this 27th day of January, 2021.

25 
 26 G. Murray Snow
 27 Chief United States District Judge

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